

**AUG 03 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

EDUARDO ALEMAN CUELLAR;  
ALICIA AURELIA ARCE AVILA,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

Nos. 05-72227  
05-74467

Agency Nos. A95-306-741  
A95-306-742

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted July 24, 2006 \*\*

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Eduardo Aleman Cuellar and his wife, Alicia Aurelia Arce Avila, natives  
and citizens of Mexico, petition for review of the Board of Immigration Appeals'

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\* This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

(“BIA”) order denying their motion to reopen removal proceedings, and its subsequent order denying their motion to reconsider. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We dismiss in part and deny in part the petitions for review.

The evidence Petitioners presented with their motion to reopen concerned the same basic hardship grounds as their application for cancellation of removal. *See Fernandez v. Gonzales*, 439 F.3d 592, 602-03 (9th Cir. 2006). We therefore lack jurisdiction to review the BIA’s discretionary determination that the evidence would not alter its prior discretionary determination that Petitioners failed to establish the requisite hardship. *See id.* at 600 (holding that 8 U.S.C. § 1252(a)(2)(B)(i) bars this court from reviewing the denial of a motion to reopen where “the only question presented is whether [the] new evidence altered the prior, underlying discretionary determination that [the petitioner] had not met the hardship standard.”) (Internal quotations and brackets omitted).

The BIA was within its discretion in denying Petitioners’ motion to reconsider because the motion failed to identify any error of fact or law in the BIA’s prior decision denying their motion to reopen and remand. *See* 8 C.F.R. § 1003.2(b)(1); *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1180 n.2 (9th Cir. 2001) (en banc).

Petitioners contend the BIA violated their due process rights by disregarding their evidence of the female petitioner's need for further medical evaluation. Contrary to Petitioners' contention, the proceedings were not "so fundamentally unfair that [they were] prevented from reasonably presenting [their] case." *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (citation omitted). Moreover, Petitioners failed to demonstrate that additional testimony would have affected the outcome of the proceedings. *See id.* (requiring prejudice to prevail on a due process challenge).

**No. 05-72227: PETITION FOR REVIEW DISMISSED in part; DENIED in part.**

**No. 05-74467: PETITION FOR REVIEW DENIED.**